

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010080006

v.

RIPON UNIFIED SCHOOL DISTRICT,

RIPON UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2010090779

v.

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

PARENT ON BEHALF OF STUDENT.

On September 28, 2010, the Office of Administrative Hearings (OAH) granted Student's motion to amend the complaint (complaint) against the Ripon Unified School District (District). On October 22, 2010, the District filed a Motion to Dismiss Issue Six in part, alleging that the OAH does not have jurisdiction to hear Student's claim of retaliation. On October 27, 2010, Student filed an opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

One key component of whether a public education agency has provided a FAPE is whether the agency has complied with the procedural requirements of the Individuals with Disabilities Education Improvement Act (IDEA). *Board of Educ. v. Rowley* (1982) 458 U.S. 176, 205-207 [102 S.Ct. 3034, 73 L.Ed.2d 690]. Since July 1, 2005, the IDEA has codified the pre-existing rule that a procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); and *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

DISCUSSION

In the present matter, the District seeks to dismiss portions of Issue Six that allege that the District failed to provide Student with behavior intervention services through Genesis Behavior Center (Genesis), a nonpublic agency that had provided behavior services to Student, pursuant to his last agreed-upon and implemented educational program. The District requests that OAH dismiss the portion of Issue Six that alleges that the District failed to provide stay put services through Genesis in retaliation of Mother's advocacy on behalf of Student and other pupils.

The District misstates Student's contention as a pure claim of retaliation, when in fact Student alleges that the District failed to provide Student with services through Genesis pursuant to his last agreed-upon and implemented educational program. Student contends that the District's procedural violation denied him a FAPE because the District's actions denied him an educational benefit. (*Student v. Hayward Unified Sch. Dist. and Alameda County Behavioral Health Care Systems* (November 28, 2007) Cal.Ofc.Admin.Hrngs. Case No. N2007080062, pp. 3-4.) Student's retaliation allegation only provides a possible motive for the District's alleged violation. Accordingly, the District's motion to dismiss portions of Issue Six is denied.

ORDER

The District's Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: October 28, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings